

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

WAYNE PINOLI,

No. C 11-01645 CRB

Plaintiff,

**ORDER DENYING MOTION FOR  
TEMPORARY RESTRAINING  
ORDER**

v.

ONEWEST BANK F.S.B. ET AL.,

Defendants.

Plaintiff Wayne Pinoli has filed a Motion for a Temporary Restraining Order asking

the Court to enjoin an unlawful detainer trial that is set to begin tomorrow in state court.

This Motion is DENIED because it does not meet the requirements for relief. See generally Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 129 S. Ct. 365, 374 (2008); Alliance for Wild Rockies v. Cottrell, No. 09-35756, 2010 WL 3665149, \*8 (9th Cir. Sept. 22, 2010).

In this Circuit, “‘serious questions going to the merits’ and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the Winter test are also met.” Alliance for the Wild Rockies, 622 F.3d at 1052. Even assuming that the other elements have been met, and even though the balance of hardships undoubtedly tips in favor of Plaintiff, who faces eviction, Plaintiff has not raised serious questions going to the merits.

Specifically, Plaintiff’s case turns largely on his allegation that Defendants improperly

1 denied him a permanent loan modification following the successful completion of a trial loan  
2 modification. See Compl. (dkt. 1) ¶ 43. But Plaintiff has not demonstrated a likelihood of  
3 succeeding in his argument that he was entitled to a permanent loan modification. Moreover,  
4 the Court notes that the only basis for its jurisdiction is Plaintiff's claim under the Real Estate  
5 Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2605, et seq. But Plaintiff has not  
6 demonstrated a likelihood of succeeding in his argument that his letters to Defendants  
7 constitute qualified written requests under RESPA. Because Plaintiff has failed to raise  
8 serious questions going to the merits, injunctive relief is not appropriate at this time.

9 Accordingly, the Motion for Temporary Restraining Order is DENIED.

10 **IT IS SO ORDERED.**



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12 Dated: June 23, 2011  
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CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE